

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TEN BRIDGES LLC, an Oregon limited liability company,

Civil Action No. 2:19-cv-01134-RAJ

ORDER

V.

SUSAN D. HOFSTAD; JUSTIN THOMAS; THE ESTATE OF BENJAMIN H. THOMAS; and JOHN DOES 1-10.

Defendants.

This matter is before the Court on Defendant Justin Thomas' motion to dismiss.

Dkt. # 8. Defendants Susan D. Hofstad and the Estate of Benjamin H. Thomas join the motion. Dkt. ## 11, 12. For the following reasons, the Court **DENIES** the motion.

ORDER - 1

I. BACKGROUND

The following is taken Plaintiff’s complaint, which is assumed to be true for the purposes of this motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007); *see also McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988) (“Moreover, when considering a motion to dismiss pursuant to Rule 12(b)(1) the district court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction.”)).

On June 13, 2010, Mr. Benjamin Thomas, Jr. (“Mr. Thomas Jr.”) died intestate, leaving two heirs, Defendants Susan D. Hofstad and Justin Thomas. Dkt. # 1 at ¶¶ 1.4, 2.3. Mr. Thomas Jr.’s home was sold at a sheriff’s foreclosure sale, later confirmed by the court in a judicial foreclosure action filed in Snohomish County Superior Court. Dkt. # 1 at ¶ 2.2. After the foreclosing plaintiff satisfied its judgment, approximately \$156,490.44 in surplus proceeds remained. Dkt. # 1 at ¶ 2.5. These funds are currently on deposit in the Snohomish County Superior Court registry. *Id.*

In May 2019, Plaintiff Ten Bridges, LLC (“Plaintiff” or “Ten Bridges”) contacted Defendant Justin Thomas and offered to purchase his interest in the property for \$9,500. Mr. Thomas agreed and executed a Quit Claim Deed in favor of Ten Bridges. Dkt. # 1 at ¶¶ 2.6–2.8. Although not a named party in the foreclosure action, Ten Bridges subsequently filed a motion to disburse the surplus proceeds from the foreclosure sale to Ten Bridges based on the Quit Claim Deed. Dkt. # 1 at ¶ 2.9. In the motion, Ten Bridges also argued that the only other remaining heir, Ms. Hofstad, had previously disclaimed any interest in the property in November 2012. *Id.* The state court denied Ten Bridges’ motion without prejudice, holding that the motion was not appropriate for the “civil motions calendar” and the surplus proceeds could not be disbursed until the parties’ respective rights were adjudicated in a “separate action.” Dkt. # 8-1 at 10.

Ten Bridges now brings this action against Defendants, alleging claims for

1 declaratory judgment, promissory estoppel, breach of contract, and unjust enrichment.

2 Dkt. # 1. Defendants move to dismiss for lack of subject matter jurisdiction. Dkt. # 8.

3 **II. DISCUSSION**

4 Federal courts are tribunals of limited jurisdiction and may only hear cases
 5 authorized by the Constitution or a statutory grant. *Kokkonen v. Guardian Life Ins. Co.*
 6 *of America*, 511 U.S. 375, 377 (1994). The burden of establishing subject-matter
 7 jurisdiction rests upon the party seeking to invoke federal jurisdiction. *Id.* Once it is
 8 determined that a federal court lacks subject-matter jurisdiction, the court has no choice
 9 but to dismiss the suit. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006); Fed. R. Civ.
 10 P. 12(b)(1).

11 **A. Prior Exclusive Jurisdiction Doctrine**

12 Defendants argue that this action is improper under the prior exclusive jurisdiction
 13 doctrine which requires federal courts to abstain from ruling on cases involving property
 14 subject to concurrent state proceedings. *See Chapman v. Deutsche Bank Nat'l Trust Co.*,
 15 651 F.3d 1039, 1043 (9th Cir. 2011)). In other words, if a state or federal court has taken
 16 possession of a property or obtained jurisdiction over the property, then a second court
 17 may not assume jurisdiction over the same property. *Id.* To determine whether the prior
 18 exclusive doctrine applies, courts must (1) identify the priority of the actions (i.e. which
 19 court exercised jurisdiction first) and (2) characterize the nature of the concurrent actions
 20 (*in rem*, *quasi in rem*, or *in personam*). If the concurrent proceeding seeks to “determine
 21 interests in the property as against the whole world” (*in rem*) or “particular persons”
 22 (*quasi in rem*), the doctrine of prior exclusive jurisdiction applies. *State Eng'r*, 339 F.3d
 23 at 810. The prior exclusive jurisdiction doctrine does not apply to actions involving the
 24 personal rights and obligations of the parties or actions brought against a person rather
 25 than property (*in personam*). *Id.* “When applying the doctrine, courts should not ‘exalt
 26 form over necessity,’ but instead should ‘look behind the form of the action to the

1 gravamen of a complaint and the nature of the right sued on.’ ” *Chapman*, 651 F.3d at
 2 1044 (citing *State Eng’r v. S. Fork Band of Te-Moak Tribe of W. Shoshone Indians*, 339
 3 F.3d 804, 810 (9th Cir. 2003).

4 The parties do not dispute that state court overseeing the judicial foreclosure
 5 action exercised *in rem* jurisdiction over the property first. However, it is not clear that
 6 there is still a pending concurrent state court action involving the rights to the surplus
 7 funds. *See Penn Gen. Cas. Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 294
 8 U.S. 189, 196 (1935) (“If the two suits do not have substantially the same purpose . . .
 9 jurisdiction of the two courts may not be said to be strictly concurrent . . .”). Defendants
 10 argue that the “determination of any party’s entitlement to the foreclosure surplus
 11 proceeds is directly at issue in the judicial foreclosure action in Snohomish County
 12 Superior Court.” Dkt. # 14 at 2. But this is contradicted by the record which shows that
 13 the court in the judicial foreclosure action explicitly denied Plaintiff’s motion to disburse
 14 the surplus funds, finding that adjudication of the interests of the parties was not
 15 appropriate for the civil motions calendar and needed to be raised by a separate action.
 16 Dkt. # 8-1 at 10. Nothing in the record suggests that such an action was ever brought in
 17 state court. Instead, it appears that the only case involving the surplus funds is the action
 18 pending before this Court.

19 And even if the judicial foreclosure proceeding is a pending concurrent state court
 20 action, Plaintiff’s *in personam* claims in this court do not require the court to exercise
 21 possession or control over the *res*. Judgment on Plaintiff’s breach of contract,
 22 promissory estoppel, and unjust enrichment claims would impose a personal liability or
 23 obligation on Defendants and would not affect the nature of their interest in the funds.
 24 Therefore, these claims are inherently *in personam* and the doctrine of prior exclusive
 25 jurisdiction does not apply. *See Hanson v. Denckla*, 357 U.S. 235, 246 n. 12 (1958).

1 And while Plaintiff's declaratory judgment claims could perhaps be characterized
 2 as *quasi in rem*, the prior exclusive jurisdiction doctrine does not apply where a party
 3 merely seeks declaratory relief regarding property interests. *See Princess Lida of Thurn*
 4 *and Taxis v. Thompson*, 305 U.S. 456, 466–67 (1939) (holding that the prior exclusive
 5 jurisdiction doctrine does not apply to federal cases based on diversity jurisdiction where
 6 the plaintiff seeks adjudication of rights to funds in possession of state court); *Goncalves*
 7 *By & Through Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1254 (9th
 8 Cir. 2017) (same); *Morris v. SPSSM Investments 8, LP*, No. CV1401305MXXXXX,
 9 2014 WL 12573523, *6 (C.D. Cal. June 4, 2014) (same). Thus, the prior exclusive
 10 jurisdiction doctrine does not apply. Defendants' motion to dismiss Plaintiff's complaint
 11 under the prior exclusion jurisdiction doctrine is DENIED.

12 **B. Amount-In-Controversy Requirement**

13 Defendants alternatively argue that Plaintiff's complaint should be dismissed for
 14 failure to satisfy the amount-in-controversy requirement under 28 U.S.C. § 1332. *See*
 15 Dkt. # 14 at 1-2. Although this argument was improperly raised for the first time in
 16 Defendants' reply brief, it is not clear from the complaint if the \$75,000 amount-in-
 17 controversy requirement is satisfied in this case. Before proceeding further with this
 18 matter, the Court is obligated to confirm whether it has subject-matter jurisdiction.

19 *Moore v. Maricopa Cty. Sheriff's Office*, 657 F.3d 890, 894 (9th Cir. 2011) ("If the court
 20 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
 21 action."). Accordingly, Plaintiff is ORDERED to SHOW CAUSE why the Court should
 22 not dismiss this action for failure to meet the amount-in-controversy requirement.
 23 Plaintiff must respond to this Order to Show Cause in a written submission, to be filed no
 24 later than 14 days after entry of this order. The submission must not exceed ten pages. If
 25 Plaintiff does not respond in time, the Court will dismiss this action, *sua sponte*. The
 26 Court DEFERS ruling on this issue pending Plaintiff's response.

III. CONCLUSION

For the above reasons, Defendants' motion to dismiss is **DENIED** in part and **DEFERRED** in part. Dkt. # 8.

DATED this 22nd day of April, 2020.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge

ORDER - 6